Supreme Court, U.S.
FILED

001126 JAN - 2 2001

Case No.:

In The

Supreme Court of the United States

October Term, 2000

MICHAEL A. SCOTT

Petitioner,

versus

NORFOLK SOUTHERN CORPORATION, *et al.,*

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

MICHAEL A. SCOTT
4753 Longmont Road
Virginia Beach, Virginia
23456-5017
(757) 495-0844

Petitioner Appearing Pro Se

45 pp

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Petitioner's Appendix A
Court of Appeals Order Dismissing Appeals

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
August 31, 2000

No. 00-1516
CA-99-348-2

MICHAEL A. SCOTT
Plaintiff - Appellant

v.

NORFOLK SOUTHERN CORPORATION; DAVID R. GOODE; STEVEN C. TOBIAS; JON L. MANETTA; DONALD D. MAYBERRY; WILLIAM E. HONEYCUTT; LEWIS D. HALE; TIMOTHY A. HEILIG; C. DAVID VITTUR; DONALD D. GRAAB; ARTIS L. LUTTRELL; JERRY R. GRAY; WAYNE F. HENLEY; JEFF E. PAIR; JERRY W. CLEMMER; GARY L. HEDGEPATH; WILLIAM D. CATRON, JR.; SAMUEL J. WEBSTER; HEATHER A. MULLEN; DAVID N. PAYNE; WILLIAMS, KELLY & GREER, P.C.

Defendants-Appellees

No. 00-1576
CA-99-1814-2

MICHAEL A. SCOTT
Plaintiff - Appellant

v.

NORFOLK SOUTHERN CORPORATION; DAVID R.

GOODE; STEVEN C. TOBIAS; JON L. MANETTA; DONALD D. MAYBERRY; WILLIAM E. HONEYCUTT; LEWIS D. HALE; TIMOTHY A. HEILIG; C. DAVID VITTUR; DONALD D. GRAAB; ARTIS L. LUTTRELL; JERRY R. GRAY; WAYNE F. HENLEY; JEFF E. PAIR; JERRY W. CLEMMER; WILLIAM D. CATRON, JR.; SAMUEL J. WEBSTER; HEATHER A. MULLEN; DAVID N. PAYNE; WILLIAMS, KELLY & GREER, P.C.; ERNIE PRICE; ELIAS I. VEGA; M. J. MOORE; ROGER A. PETERSEN; MARK D. PERREAULT; ROBERT C. SCARO

Defendants-Appellees

ORDER

Appellees have filed motions to dismiss and appellant has filed responses.

The Court grants the motions.

Entered at the direction of Senior Judge Hamilton with the concurrence of Judge Luttig and Judge King.

For the Court,

/s/ Patricia S. Connor
Clerk

Petitioner's Appendix B
Court of Appeals Order Denying Request for Rehearing

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
October 2, 2000

No. 00-1516
CA-99-348-2

MICHAEL A. SCOTT
Plaintiff - Appellant

v.

NORFOLK SOUTHERN CORPORATION; DAVID R. GOODE; STEVEN C. TOBIAS; JON L. MANETTA; DONALD D. MAYBERRY; WILLIAM E. HONEYCUTT; LEWIS D. HALE; TIMOTHY A. HEILIG; C. DAVID VITTUR; DONALD D. GRAAB; ARTIS L. LUTTRELL; JERRY R. GRAY; WAYNE F. HENLEY; JEFF E. PAIR; JERRY W. CLEMMER; GARY L. HEDGEPATH; WILLIAM D. CATRON, JR.; SAMUEL J. WEBSTER; HEATHER A. MULLEN; DAVID N. PAYNE; WILLIAMS, KELLY & GREER, P.C.
Defendants-Appellees

No. 00-1576
CA-99-1814-2

MICHAEL A. SCOTT
Plaintiff - Appellant

v.

NORFOLK SOUTHERN CORPORATION; DAVID R. GOODE; STEVEN C. TOBIAS; JON L. MANETTA; DONALD D. MAYBERRY; WILLIAM E. HONEYCUTT; LEWIS D. HALE; TIMOTHY A. HEILIG; C. DAVID VITTUR; DONALD D. GRAAB; ARTIS L. LUTTRELL; JERRY R. GRAY; WAYNE F. HENLEY; JEFF E. PAIR;

JERRY W. CLEMMER; WILLIAM D. CATRON, JR.; SAMUEL J. WEBSTER; HEATHER A. MULLEN; DAVID N. PAYNE; WILLIAMS, KELLY & GREER, P.C.; ERNIE PRICE; ELIAS I. VEGA; M. J. MOORE; ROGER A. PETERSEN; MARK D. PERREAULT; ROBERT C. SCARO

Defendants-Appellees

On Petition for Rehearing and Rehearing En Banc

Appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,

/s/ Patricia S. Connor
Clerk

Petitioner's Appendix C
Court of Appeals Order Consolidating Cases

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
August 17, 2000

No. 00-1516
CA-99-348-2

MICHAEL A. SCOTT
Plaintiff - Appellant

v.

NORFOLK SOUTHERN CORPORATION; DAVID R. GOODE; STEVEN C. TOBIAS; JON L. MANETTA; DONALD D. MAYBERRY; WILLIAM E. HONEYCUTT; LEWIS D. HALE; TIMOTHY A. HEILIG; C. DAVID VITTUR; DONALD D. GRAAB; ARTIS L. LUTTRELL; JERRY R. GRAY; WAYNE F. HENLEY; JEFF E. PAIR; JERRY W. CLEMMER; GARY L. HEDGEPATH; WILLIAM D. CATRON, JR.; SAMUEL J. WEBSTER; HEATHER A. MULLEN; DAVID N. PAYNE; WILLIAMS, KELLY & GREER, P.C.
Defendants-Appellees

No. 00-1576
CA-99-1814-2

MICHAEL A. SCOTT
Plaintiff - Appellant

v.

NORFOLK SOUTHERN CORPORATION; DAVID R. GOODE; STEVEN C. TOBIAS; JON L. MANETTA; DONALD D. MAYBERRY; WILLIAM E. HONEYCUTT; LEWIS D. HALE; TIMOTHY A. HEILIG; C. DAVID VITTUR; DONALD D. GRAAB; ARTIS L. LUTTRELL; JERRY R. GRAY; WAYNE F. HENLEY; JEFF E. PAIR; JERRY W. CLEMMER; WILLIAM D. CATRON, JR.; SAMUEL J. WEBSTER; HEATHER A. MULLEN;

DAVID N. PAYNE; WILLIAMS, KELLY & GREER, P.C.; ERNIE PRICE; ELIAS I. VEGA; M. J. MOORE; ROGER A. PETERSEN; MARK D. PERREAULT; ROBERT C. SCARO

Defendants-Appellees

ORDER

The Court consolidates the above cases for further appellate action.

For the Court - By Direction

/s/ Patricia S. Connor
CLERK

Petitioner's Appendix D
Respondents Notice of Removal for Scott XI

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

MICHAEL A. SCOTT,
Plaintiff,

v. CIVIL ACTION
NO. _____

NORFOLK SOUTHERN CORPORATION, et al.,
Defendants.

NOTICE OF REMOVAL

Defendants, Norfolk Southern Corporation, David R. Goode, Steven C. Tobias, Jon L. Manetta, Donald W. Mayberry, William E. Honeycutt, Lewis D. Hale, Timothy A. Heilig, C. David Vittur, Donald D. Graab, Artis L. Luttrell, Jerry R. Gray, Wayne F. Henley, Jeff E. Pair, Jerry W. Clemmer, Gary L. Hedgepath, William D. Catron, Jr., Samuel J. Webster, Heather A. Mullen, David N. Payne and Williams Kelly & Greer, P.C., hereby give notice to this Court pursuant to 28 U.S.C. § 1441 of removal of the above styled action (hereinafter "this action"), currently pending in the Circuit Court of the City of Norfolk, Law No. L99-351, and as grounds for removal states as follows:

1. The removing parties are defendants in this action.

2. Plaintiff filed this civil action in the Circuit Court of the City of Norfolk on February 17, 1999. A copy of the Motion for Judgment is attached hereto as Exhibit A.

3. All defendants in this action join in this Notice of Removal.

4. No further proceedings have occurred in this action in the Circuit Court of the City of Norfolk.

5. Plaintiff seeks damages in this action in three separate counts, in addition to seeking declaratory relief.

6. Count 3 is brought pursuant to 42 U.S.C. § 1981, alleging that the defendants "singularly and in concert" engaged in conduct violating plaintiff's "right to sue, be party and give evidence in Scott III, Scott IV, Scott VI, and Scott VII, all because of his black race and as acts of racial retaliation for having filed racial discrimination complaints, including Section 1981 claims, against them in the recent past." See Motion for Judgment at 12-13.

7. Count 3 sets forth a separate and independent claim of a civil nature of which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and § 1343 (a) (4). This action is removable to this Court pursuant to 28 U.S.C. § 1441 (b) and (c), and this Court may determine all issues therein.

8. This Notice of Removal is filed with this Court within 30 days of the date this action was filed in the Circuit Court of the City of Norfolk.

9. Written notice of the filing of this Notice of Removal will be provided pursuant to 28 U.S.C. § 1446 (d).

10. A copy of this Notice of Removal will be filed in the office of the Clerk of the Circuit Court of the City of Norfolk pursuant to 28 U.S.C. § 1446 (d).

WHEREFORE, defendants, Norfolk Southern Corporation, et al., request that this action be removed from the Circuit Court of the City of Norfolk and proceed in this Court as an action properly removed to it.

NORFOLK SOUTHERN CORPORATION, et al.

By /s/ Heather A. Mullen
Of Counsel

Petitioner's Appendix E
Scott XI Motion for Judgment

VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

MICHAEL A. SCOTT, ***pro se,***
4753 Longmont Road
Virginia Beach, Virginia
23456-5017
Plaintiff,
vs. **AT LAW NO. _____**
NORFOLK SOUTHERN CORPORATION
c/o James C. Bishop, Jr.
Registered Agent
Three Commercial Place
Norfolk, Virginia 23510
and
DAVID R. GOODE
Three Commercial Place
Norfolk, Virginia 23510
and
STEVEN C. TOBIAS
Three Commercial Place
Norfolk, Virginia 23510
and
JON L. MANETTA
110 Franklin Road
Roanoke, Virginia 24042
and
DONALD W. MAYBERRY
110 Franklin Road
Roanoke, Virginia 24042
and
WILLIAM E. HONEYCUTT
110 Franklin Road

Roanoke, Virginia 24042
and
LEWIS D. HALE
110 Franklin Road
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and
TIMOTHY A. HEILIG
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Roanoke, Virginia 24042
and
C. DAVID VITTUR
110 Franklin Road
Roanoke, Virginia 24042
and
DONALD D. GRAAB
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and
ARTIS L. LUTTRELL
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Roanoke, Virginia 24042
and
JERRY R. GRAY
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and
WAYNE F. HENLEY
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Norfolk, Virginia 23507
and
JEFF E. PAIR
2200 Redgate Avenue
Norfolk, Virginia 23507
and
JERRY W. CLEMMER
2200 Redgate Avenue
Norfolk, Virginia 23507

and
GARY L. HEDGEPATH
110 Franklin Road
Roanoke, Virginia 24042
and
WILLIAM D. CATRON, JR.
110 Franklin Road
Roanoke, Virginia 24042
and
SAMUEL J. WEBSTER
600 Crestar Bank Building
500 East Main Street
Norfolk, Virginia 23514-3416
and
HEATHER A. MULLEN
600 Crestar Bank Building
500 East Main Street
Norfolk, Virginia 23514-3416
and
DAVID N. PAYNE
1 Commercial Place, Suite 2000
Norfolk, Virginia 23510
and
WILLIAMS KELLY & GREER, P.C.
c/o Jack E. Greer
Registered Agent
600 Crestar Bank Building
500 East Main Street
Norfolk, Virginia 23514-3416
Defendants.

MOTION FOR JUDGMENT

I. PARTIES

1. Plaintiff is a black male citizen and resident of the Commonwealth of Virginia residing in Virginia Beach. Plaintiff worked for defendant Norfolk Southern Corporation ("NS") from August 16, 1985 until it terminated his

employment on February 16, 1996. Plaintiff last worked for NS as it's coal loading facility in Norfolk, Virginia. NS is a transportation company with its principal place of business in Norfolk, Virginia and conducts business under the laws of the Commonwealth of Virginia.

2. Defendants David R. Goode, Steven C. Tobias, Donald W. Mayberry, Jon L. Manetta, William E. Honeycutt, C. David Vittur, Donald D. Graab, Artis L. Luttrell, Timothy A. Heilig, Lewis D. Hale, Jerry R. Gray, Wayne F. Henley, Jeff E. Pair, and Jerry W. Clemmer are white male residents of the Commonwealth of Virginia (collectively referred to hereinafter as the "Fourteen Individual Defendants"), supervisors and officers of NS and each is being sued individually and in his official job capacity with NS. Defendants William D. Catron, Jr. and Gary L. Hedgepath are white male residents of the Commonwealth of Virginia and each is being sued individually and in his official job capacity with NS. The Fourteen Individual Defendants, Catron and Hedgepath will be referred to collectively hereinafter as the "individual defendants."

3. Defendants Samuel J. Webster, Heather A. Mullen and David N. Payne are white residents of the Commonwealth of Virginia, were attorneys and or partners in the law firm of Williams Kelly & Greer, P.C. ("WKG") (collectively with WKG referred to hereinafter as the "WKG Defendants") in October 1996 and each is being sued individually and in his or her official job capacity with WKG. Defendant WKG is a professional corporation of attorneys and counselors-at-law with its principal place of business in Norfolk, Virginia and conducts business under the laws of the Commonwealth of Virginia. The WKG Defendants have been the attorneys for NS and the individual defendants representing them in lawsuits previously filed by the plaintiff.

II. PLAINTIFF'S ALLEGATIONS

COMES NOW plaintiff, Michael A. Scott ("Scott"), as *pro se*, to allege the following in support of judgment against the named defendants:

4. This is an action for monetary and other appropriate relief, including costs, attorney's fees and expert witness fees, to redress deprivation of Scott's rights secured under the laws of the Commonwealth of Virginia and under the Civil Rights Act of 1866, 42 U.S.C. § 1981; and for a Declaratory Judgment Order declaring the four Settlement and Release Agreements executed by the Scott on October 10, 1996 as invalid and unenforceable.

COUNT 1

5. NS, the individual defendants and the WKG Defendants, singularly and in concert, engaged in or aided a plan, scheme and unlawful course of conduct through a series of deceptive acts to enter into settlement negotiations, and oral and written agreements with Scott which they never intended to fulfill. The defendants willfully agreed, singularly and in concert, to Webster entering into settlement negotiations and subsequently a contractual agreement with Scott with the express intent of obtaining Scott's release and dismissal of his federal court lawsuit in Scott VI (an action in which each of the individual defendants and NS were defendants) in exchange for an oral and written contractual agreement between Scott, NS and the individual defendants. Scott V and Scott VI were lawsuits Scott filed against NS and the Fourteen Individual Defendants in the United States District Court for the Eastern District of Virginia. As part of the settlement negotiations, all parties agreed that the Scott VI release agreement would not be used in any manner whatsoever by any employee of NS, except the Fourteen Individual Defendants specifically identified in it by name, whom Scott intended to sue for the allegations which formed the basis of Scott V. Further, as part of the settlement negotiations, an agreement was made between the parties that Scott could pursue his claims against two NS employees, defendants Hedgepath and Catron, in a subsequent lawsuit unencumbered by any affirmative defenses growing out of the litigation pending in October 1996, including Scott V and Scott VI. The parties agreed that WKG would draft the

Scott IV and Scott VII releases and dismissal orders. Scott IV was a case Scott had pending before the Virginia Supreme Court and Scott VII was a federal court lawsuit Scott filed against NS and the WKG Defendants in which the federal court imposed $1,000.00 in sanctions against Scott and in favor of NS and the WKG Defendants.

The defendants intentionally and deliberately misled and concealed relevant facts from Scott about their intentions and about the language of the release agreement for Scott VI. Specifically, the negotiating parties agreed to split claims allowing Scott to pursue his Scott VI allegations against Catron and Hedgepath in a separate lawsuit in exchange for its dismissal and the dismissal of Scott III. The defendants knew at the time the settlement negotiations and contractual agreement were made with Scott, including all oral representations made therewith, that they would not perform on the negotiated understandings and agreements, and that their commitments were fraudulent and would mislead Scott and fraudulently induce him to execute the release agreements and dismissal orders for each Scott case, especially since Scott was litigating without the aid of professional counsel. Of particular significance, Webster, in his role as an attorney and officer of the court, provided Scott with false and misleading legal interpretations about the release agreements and dismissal orders, and about his clients intent to file motions with the federal court withdrawing their motions for sanctions as agreed.

The defendants concealed their secret intent to allow Catron and Hedgepath to plead affirmative defenses in the action the parties agreed could be pursued by Scott unencumbered by any affirmative defense pleas of release, *res judicata* or *collateral estoppel*. Significantly, the defendants rejected Scott's demand to include language in the release agreements and dismissal orders regarding the affirmative defense pleas and Scott VI claim splitting, and instead asserted to Scott that Catron and Hedgepath would be represented by the WKG defendants and no affirmative

defense pleas would be advanced in the separate action. On or about February 3, 1998, Catron and Hedgepath, being represented by the WKG Defendants (excluding defendant Payne), pleaded release, *res judicata* and *collateral estoppel* in their answer to Scott's complaint filed against them in federal court, at which point Scott realized he had been deceived and misled about the true intentions of the defendants. Furthermore, as additional consideration for Scott executing the Scott III and Scott VI releases and dismissal orders, the defendants also agreed during the settlement negotiations that they would draft and file the appropriate motions with the federal court to "withdraw" their motion for sanctions filed and pending in other Scott cases as reflected in each of the written release agreements. Specifically, the Scott III and Scott VI settlement and release agreements stated: **"WHEREAS,** the Individual Parties and NS have agreed to withdraw the Motion for Sanctions currently pending in the Federal Court Action." The defendants made these representations to Scott either knowing that said representations were false at the time made and were made fraudulently, deliberatively, maliciously and willfully with gross negligence or with a wanton, willful and reckless disregard for the rights of Scott which fraudulently induced him to execute the release agreements and dismissal orders so that they could secure the dismissal of the Scott lawsuits without giving Scott the benefit of any consideration or the agreed to arrangement for Scott to sue defendants Catron and Hedgepath in a separate lawsuit. Scott relied on the defendants' representations in this regard in deciding to execute the releases and dismissal orders and would not have executed them had he known that the defendants would not fulfill the commitments made orally to him and in the written agreements.

The District Court entered judgment dismissing Scott's complaint against Catron and Hedgepath on June 30, 1998 ruling that it was barred by *res judicata* and *collateral estoppel.* As a result of that ruling, the District Court

awarded $5,000.00 in monetary sanctions against Scott for filing that action. Scott negotiated with the defendants in good faith and, believing that they were negotiating in good faith with him, relied, to his detriment, on the defendants fraudulent oral and written representations in deciding to execute each of the releases and dismissal orders on October 10, 1996. It was on or about December 10, 1997 after Scott filed the lawsuit against Catron and Hedgepath that he realized Catron and Hedgepath were considering the release as providing a defense for them. The conduct of the defendants inflicted injury on Scott fraudulently inducing him to surrender in good faith his property rights being sued for in the Scott cases and his property interest affected by the $5,000.00 sanctions imposed by the federal court for filing Scott IX after the parties agreed that Scott could file suit in exchange for dismissing Scott III and Scott VI.

The conduct of the defendants **fraudulently induced** Scott to execute the release agreements and dismissal orders, and evinced an intent to practice **actual fraud** and or **constructive fraud, deceit** and or **misrepresentation.**

COUNT 2

6. Plaintiff realleges and incorporates paragraphs 5 and 15 herein by reference.

7. The defendants, singularly and in concert, engaged in or aided a plan, scheme and unlawful course of conduct through a series of deceptive acts which led to their breach of the express and implied oral contractual agreement, understanding and covenant of good faith made with Scott when the WKG defendants (excluding defendant Payne) advanced the aforementioned affirmative defense pleas on behalf of Catron and Hedgepath in Scott IX; and failed to fulfill their agreement to draft and file the appropriate motions withdrawing their motion for sanctions filed and pending in Scott III and Scott VI as specifically required by the express language of the release agreements executed for those cases. The defendants expressly agreed with Scott in October 1996 that such a defense would not be advanced as

part of the agreed to arrangements made between Scott and Webster to resolve Scott III and Scott VI.

8. The release agreements Scott executed in Scott III and Scott VI specifically required the defendants to "withdraw" their motion for sanctions filed in those cases. The defendants failed to fulfill their obligation to "withdraw" the said motions with the federal court as agreed consequently breaching and tortuously interfering with the Scott III and Scott VI agreements. The only reason Scott agreed to voluntarily dismiss the Scott III and Scott VI lawsuits was because he and the defendants agreed to split the Scott VI claims and that Scott could file a separate lawsuit against Catron and Hedgepath, and because the defendants specifically agreed to file motions with the federal court to "withdraw" their motion for sanctions filed in Scott III and Scott VI at the same time they filed the dismissal orders in those cases. The settlement and release agreements Scott executed in Scott IV and Scott VII required the defendants to properly "eliminate" the monetary sanctions of $1,000.00 imposed against Scott in Scott VII pursuant to the letter Scott sent to the defendants initiating the settlement discussions on or about October 7, 1996 as he and the defendants had agreed to by filing the appropriate motions with the federal court. The defendants failed to fulfill their commitment to properly "eliminate" the $1,000.00 sanction awarded in Scott VII by filing the appropriate motions with the district court at the same time they filed the dismissal orders in those cases, consequently, breaching and tortuously interfering with the said agreements. The commitments made by the defendants fraudulently induced Scott to surrender his personal and property rights sued for in each of the four Scott cases which resulted in damage to him. Scott would not have surrendered his rights had the defendants revealed their intentions not to fulfill the commitments made in the release agreements and during the settlement negotiations.

9. The initial oral agreement was negotiated by and between Scott and Webster over the telephone on or

about October 8, 1996. Webster expressly and impliedly represented to Scott his agreement and commitment to maintaining the oral contract and agreement made after Scott executed the four releases and dismissal orders for Scott III, Scott IV, Scott VI and Scott VII. Webster willfully and intentionally made the agreement with Scott on three separate occasions, namely before, during and after Scott executed the releases and dismissal orders with no intent or plan of fulfilling the oral contract, agreement and understanding or the commitments made in the release agreements.

10. The conduct of the defendants **breached** and **tortuously interfered** with, and **conspired to breach** each of the subject release agreements.

COUNT 3

11. Plaintiff realleges and incorporates paragraphs 5, 7, 8, 9 and 15 herein by reference.

12. The defendants, singularly and in concert, engaged in or aided a plan, scheme and unlawful course of conduct through a series of deceptive acts which led to their interference with Scott's rights to make and enforce the oral and written contractual agreements, and his rights to sue, be party and give evidence in Scott III, Scott IV, Scott VI and Scott VII, all because of his black race and as acts of racial retaliation for having filed racial discrimination complaints, including Section 1981 claims, against them in the recent past. The conduct of the defendants violated plaintiffs rights under the **Civil Rights Act of 1866, 42 U.S.C. § 1981.**

DECLARATORY JUDGMENT

COMES NOW plaintiff, Michael A. Scott, as *pro se*, to allege the following in support of a Declaratory Judgment against the WKG Defendants, NS and the Fourteen Individual Defendants:

13. Plaintiff realleges and incorporates paragraphs 5, 7, 8 and 9 herein by reference.

14. Plaintiff requests that the Court enter an Order declaring the four release agreements he executed in favor of the defendants on October 10, 1996 as invalid and

unenforceable on the grounds of fraud and breach as described above, duress and oppression, unconscionable, misleading and mistake.

15. United States District Judge Henry Coke Morgan, Jr. informed Scott and the defendants on February 25, 1998 that neither of the parties to the releases had the authority to dismiss the federal court's $1,000.00 sanctions imposed against Scott in Scott VII as part of the parties negotiations which led to the Scott IV and Scott VII release agreements and dismissal orders. Specifically, the federal district court stated:

> "The Court observes that there was discussion on the release issue in some of this litigation whereby the defendant released the plaintiff from a sanction award by the Court in consideration of other undertakings.
>
> The Court advises the defendants and the plaintiff that if the Court imposes sanctions, only the Court may release a party from sanctions; the sanctions may not be released by any kind of agreement between the parties."

The defendants agreement to draft and file the appropriate motions to properly eliminate the $1,000.00 sanctions award represented the defendants consideration given in exchange for the dismissal of Scott IV and Scott VII. The defendants knew or should have known that the proper way to eliminate the monetary sanctions imposed by the federal court against Scott was to file appropriate motions with that court as they expressly agreed with Scott to do. The defendants did not file the motions as agreed to with Scott nor did they request that the federal court release or vacate the sanctions award, but rather did nothing but file the dismissal orders Scott executed with the district court. The dismissal orders were entered in the cases before the federal court entered judgment for the sanctions award of which the federal district court was made keenly aware by the defendants when it made the above

quoted comments to the parties.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Michael A. Scott demands the following relief:

(1) Judgment against the defendants, jointly and severally, in the amount of TEN MILLION AND 00/100 DOLLARS ($10,000,000.00), namely SIX MILLION AND 00/100 DOLLARS ($6,000,000.00) in compensatory damages and FOUR MILLION AND 00/100 DOLLARS ($4,000,000.00) in punitive damages, plus pre-judgment and post-judgment interest;

(2) an award of attorney fees, expert witness fees and cost of suit;

(3) an Order declaring each of the four releases as invalid and unenforceable;

(4) such other equitable or declaratory relief as the Court deems proper and just; and

(5) such other legal relief under any causes of action not specifically mentioned herein which may be applicable.

Respectfully submitted,

/s/ Michael A. Scott
Plaintiff, *pro se*

Michael A. Scott
4753 Longmont Road
Virginia Beach, Virginia
23456-5017
(757) 495-0844

Petitioner's Appendix F
Scott XIII Motion for Judgment

VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

MICHAEL A. SCOTT, pro se
4753 Longmont Road
Virginia Beach, Virginia
23456-5017

Plaintiff,

vs. **Law No._____**
JURY TRIAL DEMANDED
MOTION FOR JUDGMENT

NORFOLK SOUTHERN CORPORATION
c/o James C. Bishop, Jr.
Registered Agent
Three Commercial Place
Norfolk, Virginia 23510
and
TIMOTHY A. HEILIG
110 Franklin Road
Roanoke, Virginia 24042
and
DAVID R. GOODE
Three Commercial Place
Norfolk, Virginia 23510
and
STEVEN C. TOBIAS
Three Commercial Place
Norfolk, Virginia 23510
and
JON L. MANETTA
110 Franklin Road
Roanoke, Virginia 24042
and

DONALD W. MAYBERRY
110 Franklin Road
Roanoke, Virginia 24042
and
WILLIAM E. HONEYCUTT
110 Franklin Road
Roanoke, Virginia 24042
and
LEWIS D. HALE
110 Franklin Road
Roanoke, Virginia 24042
and
DONALD D. GRAAB
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Roanoke, Virginia 24042
and
ARTIS L. LUTTRELL
110 Franklin Road
Roanoke, Virginia 24042
and
C. DAVID VITTUR
110 Franklin Road
Roanoke, Virginia 24042
and
JERRY R. GRAY
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JEFF E. PAIR
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and
JERRY W. CLEMMER

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and
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and
WILLIAMS KELLY & GREER, P.C.
c/o Jack E. Greer
Registered Agent
600 Crestar Bank Building
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Norfolk, Virginia 23514-3416
Defendants.

MOTION FOR JUDGMENT

I. PARTIES

1. Plaintiff is a black male citizen and resident of the Commonwealth of Virginia residing in Virginia Beach. Plaintiff worked for defendant Norfolk Southern Corporation ("NS") from August 16, 1985 until it terminated his employment on February 16, 1996. Plaintiff was hired to worked for NS in Atlanta, Georgia and last worked for NS as it's coal loading facility in Norfolk, Virginia. NS is a transportation company with its principal place of business in Norfolk, Virginia and conducts business under the laws of the Commonwealth of Virginia.

2. Defendants David R. Goode, Steven C. Tobias, Donald W. Mayberry, Jon L. Manetta, William E. Honeycutt, C. David Vittur, Donald D. Graab, Artis L. Luttrell, Timothy A. Heilig, Lewis D. Hale, Jerry R. Gray, Wayne F. Henley, Jeff E. Pair, and Jerry W. Clemmer are white male residents of the Commonwealth of Virginia (collectively referred to hereinafter as the "Fourteen Individual Defendants"), supervisors and officers of NS and

each is being sued in his individual capacity. Defendants William D. Catron, Jr., Mark D. Perreault, Ernie Price, Elias I. Vega, M. J. Moore and Roger Petersen are male residents of the Commonwealth of Virginia, employees of NS and each is being sued in his individual capacity. The Fourteen Individual Defendants, Catron, Perreault, Price, Vega, Moore and Petersen will be referred to collectively hereinafter as the "individual defendants."

3. Defendants Samuel J. Webster, Heather A. Mullen Robert C. Scaro and David N. Payne are white residents of the Commonwealth of Virginia, were attorneys and or partners in the law firm of Williams Kelly & Greer, P.C. ("WKG") (collectively with WKG referred to hereinafter as the "WKG Defendants") in October 1996 and each is being sued individually and in his or her official job capacity with WKG. Defendant WKG is a professional corporation of attorneys and counselors-at-law with its principal place of business in Norfolk, Virginia and conducts business under the laws of the Commonwealth of Virginia. The WKG Defendants have been the attorneys for NS and the individual defendants representing them in lawsuits previously filed by the plaintiff. The conduct of the WKG defendants alleged herein was ratified and authorized by all defendants.

II. PLAINTIFF'S ALLEGATIONS

COMES NOW plaintiff, Michael A. Scott ("Scott"), as *pro se,* to allege the following in support of judgment against the defendants:

4. This is an action for monetary and other appropriate relief, including costs, attorney's fees and expert witness fees, to redress deprivation of Scott's rights.

5. On or about September 2, 1994, NS's Chief Executive Officer David R. Goode disseminated to Scott and all other employees of NS a letter guaranteeing all NS employees, including Scott, "the right to do your job without fear or concern of unwanted attention from your fellow employees" and "the right to the dignity and respect that you

need to perform at your best, to enjoy your work and to help Norfolk Southern accomplish its mission." The CEO further guaranteed that he was "personally committed to making sure that right is not infringed." The letter further directed that "[a]ll Norfolk Southern employees should abide by the laws that prohibit unlawful discrimination, sexual harassment and retaliation in the work place."

6. During the period beginning in March 1993 and ending with the termination of Scott's employment on February 16, 1996, Scott was subjected to "unwanted attention" in the form of "unlawful discrimination, sexual harassment and retaliation in the work place" by the individual defendants in violation of specific guarantees set forth in the written contract. Specifically, the individual defendants subjected Scott to racial harassment and retaliation in the form of abusive and hostile racial language using words such as nigger and regginrail (liarnigger when lettering is reversed); racial harassment and retaliation in the form of isolation by peers in the work place; racial harassment and retaliation in the form of increased work load and threats of bodily harm by defendants Clemmer, Henley and Moore; racial harassment and discrimination in the form of an assault and battery by defendant Catron on February 15, 1996; sexual harassment in the form of repeated unwanted physical contact in the workplace by male coworkers; sexual harassment in the form of abusive and hostile homosexual language in the workplace by male coworkers; retaliation in the form of harassment and increased work load; retaliation in the form of abolishing Scott's mechanical foreman's position at NS's coal loading facility in Norfolk and transferring the position to Decatur, Illinois on February 16, 1996; and retaliation and racial discrimination in the form of terminating Scott's employment on February 16, 1996.

7. The aforesaid conduct of the defendants breached and tortuously interfered with the contract from defendant Goode guaranteeing Scott the right to work

without such malicious, abusive and discriminatory conduct in the work place.

8. Scott was a member of a four person engineering staff at the coal loading facility. On or about November 10, 1995, defendant Gray met with Scott and provided him a letter announcing Scott's salary increase and stating that "the Engineering Staff will continue to perform well during 1996." On or about February 29, 1996, defendant Heilig sent Scott a letter announcing that "you will continue your accomplishments throughout 1996." These two letters announced that Scott's employment with NS would continue for all of 1996.

9. The conduct of the defendants in terminating Scott's employment **breached** and **tortuously interfered** with the contracts assuring that Scott's employment would continue throughout 1996.

10. In the Fall of 1992 after Scott had sustained an injury at work which resulted in decreased vision in his right eye, NS master mechanic L. C. Smith informed Scott that the company was creating a new engineering position for him to work and that the position was created to be a permanent desk job so as to minimize Scott's exposure to the risk of injury in the railroad's work environment because of his monocular vision. NS's commitment to Scott for the creation of the new engineering position was memorialized through a series of written letters and written comments by its employees. Furthermore, because the permanent desk job had been created for Scott due to his monocular vision, he informed NS on his August 1994 and January 1995 job performance appraisals that he did not wish to relocate or transfer.

11. On or about January 10, 1996, the defendants initiated formal documents authorizing the abolishment of Scott's permanent engineering position and transferring Scott to Decatur, Illinois, both effective February 16, 1996. As a result of terminating Scott's employment, abolishing his engineering position and transferring it to Decatur, Illinois,

the defendants **breached** and **tortuously interfered** with the written and oral agreements assuring Scott that he would remain on the permanent engineering position and would not be relocated or transferred.

12. On or about November 1, 1991, NS CEO Arnold B. McKinnon disseminated to Scott and its other employees a letter announcing the company's compliance policy, to which was attached a copy of the compliance policy. Scott was required to acknowledge and endorse his receipt and reading of the policy which required him and all other employees to comply with applicable laws. The aforesaid conduct of the defendants in their "unlawful discrimination, sexual harassment and retaliation in the work place" **breached** and **tortuously interfered** with the compliance policy contract.

13. On August 16, 1986, NS and Scott entered into an employment contract in Atlanta under the laws of the state of Georgia. During the course of the hiring process, various NS employees told Scott that he was being hired for a lifetime career until his retirement. As part of that employment contract, NS provided Scott an employee benefits handbook in which the terms for his employment, specifically his retirement benefits, were set forth guaranteeing Scott employment until the retirement age of 65. The aforesaid malicious and reckless conduct of the defendants in their "unlawful discrimination, sexual harassment and retaliation in the work place," defamation, assault and battery, and termination **breached** and **tortuously interfered** with the employment contract.

14. The defendants, singularly and in concert, engaged in or aided a plan, scheme and unlawful course of conduct through a series of deceptive acts which led to their breach of the express and implied oral contractual agreement, understanding and covenant of good faith made with Scott when the WKG defendants (excluding defendant Payne) advanced the aforementioned affirmative defense pleas on behalf of Catron and Hedgepath in Scott IX; and

failed to fulfill their agreement to draft and file the appropriate motions withdrawing their motion for sanctions filed and pending in Scott III and Scott VI as specifically required by the express language of the release agreements executed for those cases. The defendants expressly agreed with Scott in October 1996 that such a defense would not be advanced as part of the agreed to arrangements made between Scott and Webster to resolve Scott III and Scott VI.

15. The release agreements Scott executed in Scott III and Scott VI specifically required the defendants to "withdraw" their motion for sanctions filed in those cases. The defendants failed to fulfill their obligation to "withdraw" the said motions with the federal court as agreed consequently breaching and tortuously interfering with the Scott III and Scott VI agreements. The only reason Scott agreed to voluntarily dismiss the Scott III and Scott VI lawsuits was because he and the defendants agreed to split the Scott VI claims and that Scott could file a separate lawsuit against Catron and Hedgepath, and because the defendants specifically agreed to file motions with the federal court to "withdraw" their motion for sanctions filed in Scott III and Scott VI at the same time they filed the dismissal orders in those cases. The settlement and release agreements Scott executed in Scott IV and Scott VII required the defendants to properly "eliminate" the monetary sanctions of $1,000.00 imposed against Scott in Scott VII pursuant to the letter Scott sent to the defendants initiating the settlement discussions on or about October 7, 1996 as he and the defendants had agreed to by filing the appropriate motions with the federal court. The defendants failed to fulfill their commitment to properly "eliminate" the $1,000.00 sanction awarded in Scott VII by filing the appropriate motions with the district court at the same time they filed the dismissal orders in those cases, consequently, breaching and tortuously interfering with the said agreements. The commitments made by the defendants fraudulently induced Scott to

surrender his personal and property rights sued for in each of the four Scott cases which resulted in damage to him. Scott would not have surrendered his rights had the defendants revealed their intentions not to fulfill the commitments made in the release agreements and during the settlement negotiations.

16. The initial oral agreement was negotiated by and between Scott and Webster over the telephone on or about October 8, 1996. Defendant Webster expressly and impliedly represented to Scott his agreement and commitment to maintaining the oral contract and agreement made after Scott executed the four releases and dismissal orders for Scott III, Scott IV, Scott VI and Scott VII. Webster willfully and intentionally made the agreement with Scott on three separate occasions, namely before, during and after Scott executed the releases and dismissal orders with no intent or plan of fulfilling the oral contract, agreement and understanding or the commitments made in the release agreements.

17. The conduct of the defendants **breached** and **tortuously interfered** with, and **conspired to breach** each of the subject release agreements.

18. The contract breaches and tortuous interference with the contracts by the defendants were neither justified nor excused by the plaintiff. In all such breaches and interference, the plaintiff was damaged as a result of the defendants malicious and reckless conduct.

19. NS, the individual defendants and the WKG Defendants, singularly and in concert, engaged in or aided a plan, scheme and unlawful course of conduct through a series of deceptive acts to enter into settlement negotiations, and oral and written agreements with Scott which they never intended to fulfill. The defendants willfully agreed, singularly and in concert, to Webster entering into settlement negotiations and subsequently a contractual agreement with Scott with the express intent of obtaining Scott's release and dismissal of his federal court lawsuit in Scott VI (an action in

which each of the individual defendants and NS were defendants) in exchange for an oral and written contractual agreement between Scott, NS and the individual defendants. Scott V and Scott VI were lawsuits Scott filed against NS and the Fourteen Individual Defendants in the United States District Court for the Eastern District of Virginia. As part of the settlement negotiations, all parties agreed that the Scott VI release agreement would not be used in any manner whatsoever by any employee of NS, except the Fourteen Individual Defendants specifically identified in it by name, whom Scott intended to sue for the allegations which formed the basis of Scott V. Further, as part of the settlement negotiations, an agreement was made between the parties that Scott could pursue his claims against two NS employees, G. L. Hedgepath and defendant Catron, in a subsequent lawsuit unencumbered by any affirmative defenses growing out of the litigation pending in October 1996, including Scott V and Scott VI. The parties agreed that WKG would draft the Scott IV and Scott VII releases and dismissal orders. Scott IV was a case Scott had pending before the Virginia Supreme Court and Scott VII was a federal court lawsuit Scott filed against NS and the WKG Defendants in which the federal court imposed $1,000.00 in sanctions against Scott and in favor of NS and the WKG Defendants.

The defendants intentionally and deliberately misled and concealed relevant facts from Scott about their intentions and about the language of the release agreement for Scott VI. Specifically, the negotiating parties agreed to split claims allowing Scott to pursue his Scott VI allegations against Catron and Hedgepath in a separate lawsuit in exchange for its dismissal and the dismissal of Scott III. The defendants knew at the time the settlement negotiations and contractual agreement were made with Scott, including all oral representations made therewith, that they would not perform on the negotiated understandings and agreements, and that their commitments were fraudulent and would

mislead Scott and fraudulently induce him to execute the release agreements and dismissal orders for each Scott case, especially since Scott was litigating without the aid of professional counsel. Of particular significance, Webster, in his role as an attorney and officer of the court, provided Scott with false and misleading legal interpretations about the release agreements and dismissal orders, and about his clients intent to file motions with the federal court withdrawing their motions for sanctions as agreed.

The defendants concealed their secret intent to allow Catron and Hedgepath to plead affirmative defenses in the action the parties agreed could be pursued by Scott unencumbered by any affirmative defense pleas of release, *res judicata* or *collateral estoppel*. Significantly, the defendants rejected Scott's demand to include language in the release agreements and dismissal orders regarding the affirmative defense pleas and Scott VI claim splitting, and instead asserted to Scott that Catron and Hedgepath would be represented by the WKG defendants and no affirmative defense pleas would be advanced in the separate action. On or about February 3, 1998, Catron and Hedgepath, being represented by the WKG Defendants (excluding defendant Payne), pleaded release, *res judicata* and *collateral estoppel* in their answer to Scott's complaint filed against them in federal court, at which point Scott realized he had been deceived and misled about the true intentions of the defendants. Furthermore, as additional consideration for Scott executing the Scott III and Scott VI releases and dismissal orders, the defendants also agreed during the settlement negotiations that they would draft and file the appropriate motions with the federal court to "withdraw" their motion for sanctions filed and pending in other Scott cases as reflected in each of the written release agreements. Specifically, the Scott III and Scott VI settlement and release agreements stated: **"WHEREAS,** the Individual Parties and NS have agreed to withdraw the Motion for Sanctions currently pending in the Federal Court Action." The

defendants made these representations to Scott either knowing that said representations were false at the time made and were made fraudulently, deliberately, maliciously and willfully with gross negligence or with a wanton, willful and reckless disregard for the rights of Scott which fraudulently induced him to execute the release agreements and dismissal orders so that they could secure the dismissal of the Scott lawsuits without giving Scott the benefit of any consideration or the agreed to arrangement for Scott to sue Catron and Hedgepath in a separate lawsuit. Scott relied on the defendants' representations in this regard in deciding to execute the releases and dismissal orders and would not have executed them had he known that the defendants would not fulfill the commitments made orally to him and in the written agreements.

The District Court entered judgment dismissing Scott's complaint against Catron and Hedgepath on June 30, 1998 ruling that it was barred by *res judicata* and *collateral estoppel.* As a result of that ruling, the District Court awarded $5,000.00 in monetary sanctions against Scott for filing that action. Scott negotiated with the defendants in good faith and, believing that they were negotiating in good faith with him, relied, to his detriment, on the defendants fraudulent oral and written representations in deciding to execute each of the releases and dismissal orders on October 10, 1996. It was on or about December 10, 1997 after Scott filed the lawsuit against Catron and Hedgepath that he realized Catron and Hedgepath were considering the release as providing a defense for them. The conduct of the defendants inflicted injury on Scott fraudulently inducing him to surrender in good faith his property rights being sued for in the Scott cases and his property interest affected by the $5,000.00 sanctions imposed by the federal court for filing Scott IX after the parties agreed that Scott could file suit in exchange for dismissing Scott III and Scott VI.

The conduct of the defendants fraudulently induced Scott to execute the release agreements and dismissal orders,

and evinced an intent to practice **actual fraud** and or **constructive fraud, deceit** and or **misrepresentation.**

20. In the course of litigating Scott X in the federal court, the defendants (excluding defendant Payne) singularly and in concert, engaged in or aided a plan, scheme and unlawful course of conduct through a series of deceptive acts in representations they made to Scott and the federal court in or around June 1998. Specifically, the defendants prepared and then submitted to the Virginia Beach circuit court for authorization a summons to answer interrogatories under § 8.01-506 on or about June 3, 1998. In that summons, the defendants willfully and maliciously misrepresented that a writ of fieri facias had been issued on June 3, 1998 upon which they would base their collection efforts. The defendants served the summons on Scott on June 4, 1998. No valid writ of fieri facias was issued. However, defendant Mullen represented to Scott and the federal court in affidavit testimony that the summons to answer interrogatories the defendants prepared was "[t]rue and correct." Scott relied on those representations to his detriment and as a result of such reliance and the misrepresentations made, the federal court imposed a $5,000 sanction against him finding that the defendants' conduct was proper when, in fact, it was not since having a writ of fieri facias was a fundamental prerequisite for a judgment creditor to institute collection proceedings in Virginia.

The conduct of the defendants (excluding Payne) **fraudulently induced** the imposition of a $5,000 sanction against Scott by the federal court, and evinced an intent to practice **actual fraud** and or **constructive fraud, deceit** and or **misrepresentation.**

21. On June 15, 1998, the defendants (excluding Payne) singularly and in concert, engaged in or aided a plan, scheme and unlawful course of conduct summoning Scott to improperly instituted debtors interrogatories before Commissioner in Chancery James A. Gorry, III and to produce various documents itemized in a subpoena duces

tecum they obtained from the Virginia Beach circuit court. The debtors interrogatory session and subpoena were entirely improper because there was no writ of fieri facias authorizing them, which is a basic prerequisite to instituting collection proceeding in Virginia. The defendants have since instituted additional collections proceedings making their collection efforts a frequent and continuous occurrence. During the debtors interrogatory session, defendant Mullen improperly seized $40.00 from Scott on authority of and in concert with Commissioner Gorry. The defendants (excluding Payne) caused process to issue in the collection proceedings and then misused such process to accomplish their ulterior motives of harassing and retaliating against Scott for having sued them on previous occasions.

The malicious and willful conduct of the defendants (excluding Payne) evinced an intent to **maliciously abuse the legal process** and to **maliciously prosecute** Scott during the collection proceedings, which also violated Scott's rights under **Article I, § 11 of the Virginia Constitution.**

22. On or about July 28, 1999, the federal court ordered "Scott to appear before this Court on Thursday, August 26, 1999 at 9:15 a.m. to show cause why he should not be held in contempt for filing yet another motion to vacate." During the hearing, the federal court asked the WKG Defendants (excluding Payne) if they wished to be heard in connection with the proceeding and that the court would allow them to be heard first. Defendant Webster responded: "Your Honor, we have no reason to be heard at this point." At the conclusion of Scott's discussions with the federal court, the federal court again asked defendant Webster if he and his clients had any input. At that time, defendant Webster proceeded to introduce two letters received from Scott offering to settle all litigation with the defendants. Thereafter, defendant Webster then accused Scott of illegally practicing law by "working on other lawsuits that are being filed in this [federal] court." Defendant Webster further stated: "So we would support a

contempt finding based upon those additional facts, and at a minimum ask that the court either stay or dismiss all pending cases unless he pays the sanctions, judgments within 30 days." The letters introduced by defendant Webster and the malicious accusation against Scott of illegally practicing law had absolutely nothing to do with the specific reason the show cause hearing was held and represented allegations completely irrelevant to that proceeding. The defendants' ulterior motives were clearly to use the show cause hearing to attempt to force Scott and or whip him into payment of the sanctions.

23. After Defendant Webster accused Scott of illegally practicing law, the federal court questioned Scott under oath about those allegations. After Scott finished testifying, defendant Webster introduced in evidence to the federal court deposition testimony of George Mungin in support of the defendants (excluding Payne) malicious allegations. The defendants improperly, and over the objections of Mr. Mungin's counsel, obtained Mr. Mungin's testimony regarding the manner in which he prepared the complaint he filed pro se in the federal court against defendants NS, Price and Henley. The defendants recklessly and maliciously and with evil intent conspired and agreed to, singularly and in concert, to misuse and abuse the legal process in the Mungin case, during which the WKG defendants (excluding Payne) were counsel, to obtain evidence to support their false beliefs and malicious allegations against Scott. Scott did not know about or participate in the Mungin deposition proceeding. The matter of who prepared Mr. Mungin's complaint was completely irrelevant to his complaint allegations of discrimination and even more irrelevant to the show cause hearing regarding the motion to vacate Scott filed. Nevertheless, the defendants used Mr. Mungin's deposition testimony to accuse Scott of perjury before the federal court. In response to that testimony, the federal court continued the show cause hearing until October 1, 1999 at which time it subpoenaed

Mr. Mungin to testify. The defendant's campaign of accusing Scott of perjury continued at that continued hearing.

The malicious and wiliful conduct of the defendants (excluding Payne) humiliated, belittled, **defamed** and **insulted** Scott, and evinced an intent to **maliciously abuse the legal process** and to **maliciously prosecute (both civilly and criminally)** Scott in the federal court in order to force payment of the sanctions.

DECLARATORY JUDGMENT

COMES NOW plaintiff, Michael A. Scott, as *pro se*, to allege the following in support of a Declaratory Judgment against the WKG Defendants, NS, and the Fourteen Individual Defendants:

24. Plaintiff incorporates paragraphs 14, 15, 16 and 19 herein by reference as though fully set forth herein.

25. Plaintiff requests that the Court enter an Order declaring four settlement and release agreements he executed in favor of the defendants on October 10, 1996 as invalid and unenforceable on the grounds of fraud, duress and oppression, unconscionable, misleading, mistake, and as against public policy; and for a finding that the defendants actually and or constructively defrauded, misled and deceived Scott in the course of negotiating for and obtaining the four settlement and release agreements.

26. United States District Judge Henry Coke Morgan, Jr. informed Scott and the defendants on February 25, 1998 that neither of the parties to the releases had the authority to dismiss the federal court's $1,000.00 sanctions imposed against Scott in Scott VII as part of the parties negotiations which led to the Scott IV and Scott VII release agreements and dismissal orders. Specifically, the federal district court stated:

"The Court observes that there was discussion on the release issue in some of this litigation whereby the defendant released the plaintiff from a sanction award by the Court in consideration of other undertakings.

The Court advises the defendants and the plaintiff that if the Court imposes sanctions, only the Court may release a party from sanctions; the sanctions may not be released by any kind of agreement between the parties."

The defendants agreement to draft and file the appropriate motions to properly eliminate the $1,000 sanctions award represented the defendants consideration given in exchange for the dismissal of Scott IV and Scott VII. The defendants knew or should have known that the proper way to eliminate the monetary sanctions imposed by the federal court against Scott was to file appropriate motions with that court as they expressly agreed with Scott to do. The defendants did not file the motions as agreed to with Scott nor did they request that the federal court release or vacate the sanctions award, but rather did nothing but file the dismissal orders Scott executed with the district court. The dismissal orders were entered in the cases before the federal court entered judgment for the sanctions award of which the federal district court was made keenly aware by the defendants when it made the above quoted comments to the parties. In early October 1996, the defendants combined collectively and then agreed with Scott to split his claims in Scott V with regard to defendant Catron and Hedgepath and file a separate suit against them at the conclusion of Scott V in federal court as consideration for his dismissal of Scott III and Scott VI. The Scott V case concluded in early April 1997. After Scott filed suit against Catron and Hedgepath in federal court in December 1997, the WKG Defendants asserted numerous affirmative defenses on their behalf. The case against Catron and Hedgepath was dismissed based on those affirmative defenses and Scott was sanctioned by the federal court for $5,000 for filing the case. Scott relied on the representations of the defendants in the course of the settlement negotiations in deciding to execute the settlement and release agreements and dismissal orders to his detriment and was **actually and constructively defrauded** by the defendants.

27. The settlement and release agreements, having been drafted by the WKG Defendants, specifically stated that the defendants would "withdraw" their motion for sanctions pending in the federal court. The defendants failed to withdraw their motions as required by the specific terms of the agreements. The defendants representation to Scott that they would withdraw the motion for sanctions as consideration for executing the agreements encouraged Scott to execute the agreements as the defendants maliciously threatened Scott with the motion for sanctions during the course of the settlement negotiations.

28. The conduct of the defendants in the course of the settlement negotiations of defrauding, misleading and threatening Scott was neither justified nor excused by the plaintiff.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Michael A. Scott demands the following relief:

(1) Judgment against the defendants, jointly and severally, in the amount of ELEVEN MILLION AND 00/100 DOLLARS ($11,000,000.00), namely NINE MILLION SIX HUNDRED THOUSAND AND 00/100 DOLLARS ($9,600,000.00) in compensatory damages and ONE MILLION FOUR HUNDRED THOUSAND AND 00/100 DOLLARS ($1,400,000.00) in punitive damages, plus pre-judgment and post-judgment interest;

(2) an award of attorney fees, expert witness fees and cost of suit;

(3) such other equitable relief as the Court deems proper and just;

(4) an Order declaring each of the four releases as invalid and unenforceable; and

(5) such other legal relief under any causes of action not specifically mentioned herein which may be applicable under the laws of the Commonwealth of Virginia.

Respectfully submitted,

/S/ Michael A. Scott
Plaintiff, *pro se*

Michael A. Scott
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Petitioner's Appendix G
Respondents Notice of Removal for Scott XIII

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

MICHAEL A. SCOTT,
Plaintiff,

v. CIVIL ACTION NO. _____

NORFOLK SOUTHERN CORPORATION, et al.,
Defendants.

NOTICE OF REMOVAL

Defendants, Norfolk Southern Corporation, Timothy A. Heilig, David E. Goode, Steven C. Tobias, Jon L. Manetta, Donald W. Mayberry, William E. Honeycutt, Lewis D. Hale, Donald W. Graab, Artis L. Luttrell, C. David Vittur, Jerry L. Gray, Wayne F. Henley, Jeff E. Pair, Jerry W. Clemmer, Ernie Price, Elias I. Vega, M. J. Moore, William D. Catron, Jr., Roger A. Petersen, Mark D. Perreault, Samuel J. Webster, Heather A. Mullen, Robert C. Scaro, David N. Payne and Williams Kelly & Greer, P.C., hereby give notice to this Court, pursuant to 28 U.S.C. § 1441, of removal of the above styled action (hereinafter "this action"), currently pending in the Circuit Court of the City of Virginia Beach, Law No. CL99-2577, and as grounds of removal states as follows:

1. The removing parties are defendants in this action.

2. Plaintiff filed this civil action in the Circuit Court of the City of Virginia Beach on October 5, 1999. Pursuant to 28 U.S.C. § 1446(a), a copy of the Motion for Judgment, with copies of the respective Notices of Motions for Judgment served upon the defendants, is attached hereto as Exhibit A. As of October 28, 1999, defendants Manetta, Hale, and Luttrell had not been served and defendants Catron

had not been properly served, if served at all.

2. All defendants in this action join in this Notice of Removal.

3. No further proceedings have occurred in this action in the Circuit Court of the City of Virginia Beach.

4. The Motion for Judgment seeks money damages and declaratory relief against all defendants.

5. The allegations of the Motion for Judgment assert claims which invoke the jurisdiction of this Court under its power to hear matters concerning a federal question. Specifically it alleges, in part:

a. That "Scott was subjected to 'unwanted attention' in the form of 'unlawful discrimination, sexual harassment and retaliation in the work place. . . .'" (Motion for Judgment, Paragraph 6);

b. That the "individual defendants" subjected Scott to racial harassment and retaliation in the form of abusive and hostile racial language, isolation by peers in the workplace, increased workload and threats of bodily harm; racial harassment and discrimination in the form of a February 1996 assault and battery; sexual harassment in the form of repeated unwanted physical contact and abusive and hostile homosexual language in the workplace; retaliation in the form of harassment and increased work load, job abolishment, and transfer; and retaliation and racial discrimination in the form of terminating Scott's employment" (Motion for Judgment, Paragraph 6);

6. While Plaintiff has attempted to couch his discrimination forms in the guise of "contract" claims, the Motion for Judgment reveals that Title VII and other discrimination laws are the true basis for Plaintiff's claims.

7. In addition, the Motion for Judgment seeks relief for alleged conduct which is directly connected to prior and continuing litigation in this Court, including the effect of releases executed in prior cases, the dismissal of prior cases, the imposition of sanctions by this Court, and a finding of criminal contempt against the Plaintiff in which sentencing is

currently pending before this Court.

8. The Motion for Judgment sets forth separate and independent claims of a civil nature over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331.

9. This action is removable to this Court pursuant to 28 U.S.C. § 1441 (b) and (c), and this Court may determine all issues therein.

10. This Notice of Removal is filed with this Court within 30 days of the date this action was filed in the Circuit Court of the City of Virginia Beach.

11. Written notice of the filing of this Notice of Removal will be provided pursuant to 28 U.S.C. § 1446 (d).

12. A copy of this Notice of Removal will be filed in the office of the Clerk of the Circuit Court of the City of Virginia Beach pursuant to 28 U.S.C. § 1446 (d).

Wherefore, defendants, Norfolk Southern Corporation, et al., request that this action be removed from the Circuit Court of the City of Virginia Beach and proceed in this Court as an action properly removed to it.

NORFOLK SOUTHERN CORPORATION, ET AL.

By /s/ Heather A. Mullen
Of Counsel